

AMENDED IN ASSEMBLY JANUARY 4, 2016

AMENDED IN ASSEMBLY APRIL 6, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 923

Introduced by Assembly Member Steinorth

February 26, 2015

An act to amend Sections 3750 and 3755 of, and to add ~~Sections 3754.8 and 3769.7~~ *Section 3754.8* to, the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

AB 923, as amended, Steinorth. Respiratory care practitioners.

(1) Under the Respiratory Care Practice Act, the Respiratory Care Board of California licenses and regulates the practice of respiratory care and therapy. The act authorizes the board to order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license issued under the act, for any of specified causes. A violation of the act is a crime.

This bill would include among those causes for discipline the commission *by specified licensees* of an act of neglect, endangerment, or abuse involving a person under 18 years of age, a person 65 years of age or older, or a dependent adult, as described, *without regard to whether the person is a patient*, and the *knowing* provision of false statements or information on any form provided by the board or to any person representing the board during an investigation, probation monitoring compliance check, or any other enforcement-related action.

The bill would provide that the expiration, cancellation, forfeiture, or suspension of a license, practice privilege, or other authority to

practice respiratory care, the placement of a license on a retired status, or the voluntary surrender of a license by a licensee, does not deprive the board of jurisdiction to commence or proceed with any investigation of, or action or disciplinary proceeding against, the licensee, or to render a decision to suspend or revoke the license.

(2) Under the act the board may take action against a respiratory care practitioner who is charged with unprofessional conduct which includes, but is not limited to, repeated acts of clearly administering directly or indirectly inappropriate or unsafe respiratory care procedures, protocols, therapeutic regimens, or diagnostic testing or monitoring techniques, and violation of any provision for which the board may order the denial, suspension, or revocation of, or the imposition of probationary conditions upon, a license. The act provides that engaging in repeated acts of unprofessional conduct is a crime.

This bill would expand the definition of unprofessional conduct to include ~~any single act described above or any single act of abusive behavior, including, but not limited to, humiliation, intimidation, ridicule, coercion, threat, or any other conduct that threatens the health, welfare, or safety of a person, whether or not the victim is a patient, a friend or family member of the patient, or an employee.~~ *any act of abuse towards a patient.* Because this bill would change the definition of a crime, it would impose a state-mandated local program.

~~(3) The act authorizes the board to deny, suspend, or take other actions against a license for, among other things, conviction of a sex offense or any crime involving bodily injury or sexual misconduct.~~

~~This bill would authorize the board to provide notice of an applicant's or licensee's arrest for those crimes on the board's Internet Web site, to employers, or both, and would require the board to remove the notice 60 days after the criminal matter is adjudicated or when all appeal rights have been exhausted, whichever is later.~~

(4) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 3750 of the Business and Professions
2 Code is amended to read:

3 3750. The board may order the denial, suspension, or revocation
4 of, or the imposition of probationary conditions upon, a license
5 issued under this chapter, for any of the following causes:

6 (a) Advertising in violation of Section 651 or Section 17500.

7 (b) Fraud in the procurement of any license under this chapter.

8 (c) Knowingly employing unlicensed persons who present
9 themselves as licensed respiratory care practitioners.

10 (d) Conviction of a crime that substantially relates to the
11 qualifications, functions, or duties of a respiratory care practitioner.
12 The record of conviction or a certified copy thereof shall be
13 conclusive evidence of the conviction.

14 (e) Impersonating or acting as a proxy for an applicant in any
15 examination given under this chapter.

16 (f) Negligence in his or her practice as a respiratory care
17 practitioner.

18 (g) Conviction of a violation of this chapter or of Division 2
19 (commencing with Section 500), or violating, or attempting to
20 violate, directly or indirectly, or assisting in or abetting the
21 violation of, or conspiring to violate this chapter or Division 2
22 (commencing with Section 500).

23 (h) The aiding or abetting of any person to violate this chapter
24 or any regulations duly adopted under this chapter.

25 (i) The aiding or abetting of any person to engage in the unlawful
26 practice of respiratory care.

27 (j) The commission of any fraudulent, dishonest, or corrupt act
28 that is substantially related to the qualifications, functions, or duties
29 of a respiratory care practitioner.

30 (k) Falsifying, or making grossly incorrect, grossly inconsistent,
31 or unintelligible entries in any patient, hospital, or other record.

32 (l) Changing the prescription of a physician and surgeon, or
33 falsifying verbal or written orders for treatment or a diagnostic
34 regime received, whether or not that action resulted in actual patient
35 harm.

36 (m) Denial, suspension, or revocation of any license to practice
37 by another agency, state, or territory of the United States for any

1 act or omission that would constitute grounds for the denial,
2 suspension, or revocation of a license in this state.

3 (n) (1) Except for good cause, the knowing failure to protect
4 patients by failing to follow infection control guidelines of the
5 board, thereby risking transmission of bloodborne infectious
6 diseases from licensee to patient, from patient to patient, and from
7 patient to licensee. In administering this subdivision, the board
8 shall consider referencing the standards, regulations, and guidelines
9 of the State Department of Health Services developed pursuant to
10 Section 1250.11 of the Health and Safety Code and the standards,
11 regulations, and guidelines pursuant to the California Occupational
12 Safety and Health Act of 1973 (Part 1 (commencing with Section
13 6300) of Division 5 of the Labor Code) for preventing the
14 transmission of HIV, hepatitis B, and other bloodborne pathogens
15 in health care settings. As necessary, the board shall consult with
16 the California Medical Board, the Board of Podiatric Medicine,
17 the Dental Board of California, the Board of Registered Nursing,
18 and the Board of Vocational Nursing and Psychiatric Technicians,
19 to encourage appropriate consistency in the implementation of this
20 subdivision.

21 ~~The~~

22 (2) *The* board shall seek to ensure that licensees are informed
23 of the responsibility of licensees and others to follow infection
24 control guidelines, and of the most recent scientifically recognized
25 safeguards for minimizing the risk of transmission of bloodborne
26 infectious diseases.

27 (o) Incompetence in his or her practice as a respiratory care
28 practitioner.

29 (p) A pattern of substandard care or negligence in his or her
30 practice as a respiratory care practitioner, or in any capacity as a
31 health care worker, consultant, supervisor, manager or health
32 facility owner, or as a party responsible for the care of another.

33 (q) ~~Commission~~ *If the licensee is a mandated reporter or is*
34 *required to report under Article 2 (commencing with Section*
35 *11160) or Article 2.5 (commencing with Section 11164) of Title 1*
36 *of Part 4 of the Penal Code. The commission* of an act of neglect,
37 endangerment, or abuse involving a person under 18 years of age,
38 a person 65 years of age or older, or a dependent adult as described
39 in Section 368 of the Penal Code, without regard to whether the
40 person ~~was~~ *is* a patient.

1 (r) ~~Providing~~—*Knowingly providing* false statements or
2 information on any form provided by the board or to any person
3 representing the board during an investigation, probation
4 monitoring compliance check, or any other enforcement-related
5 action.

6 SEC. 2. Section 3754.8 is added to the Business and Professions
7 Code, to read:

8 3754.8. The expiration, cancellation, forfeiture, or suspension
9 of a license, practice privilege, or other authority to practice
10 respiratory care by operation of law or by order or decision of the
11 board or a court of law, the placement of a license on a retired
12 status, or the voluntary surrender of the license by a licensee shall
13 not deprive the board of jurisdiction to commence or proceed with
14 any investigation of, or action or disciplinary proceeding against,
15 the licensee, or to render a decision to suspend or revoke the
16 license.

17 SEC. 3. Section 3755 of the Business and Professions Code is
18 amended to read:

19 3755. The board may take action against ~~any~~ *a* respiratory care
20 practitioner who is charged with unprofessional conduct in
21 administering, or attempting to administer, direct or indirect
22 respiratory care in any care setting. Unprofessional conduct
23 includes, but is not limited to, ~~any act repeated acts~~ of clearly
24 administering directly or indirectly inappropriate or unsafe
25 respiratory care procedures, protocols, therapeutic regimens, or
26 diagnostic testing or monitoring techniques, ~~abusive behavior,~~
27 ~~including, but not limited to, humiliation, intimidation, ridicule,~~
28 ~~coercion, threat, or any other conduct that threatens the health,~~
29 ~~welfare, or safety of a person, whether or not the victim is a patient,~~
30 ~~a friend or family member of the patient, or an employee, any act~~
31 ~~of abuse towards a patient, or a~~ violation of any provision of
32 Section 3750. The board may determine unprofessional conduct
33 involving any and all aspects of respiratory care performed by
34 anyone licensed as a respiratory care practitioner. Any person who
35 engages in repeated acts of unprofessional conduct shall be guilty
36 of a misdemeanor and shall be punished by a fine of not more than
37 one thousand dollars (\$1,000), or by imprisonment for a term not
38 to exceed six months, or by both that fine and imprisonment.

39 ~~SEC. 4. Section 3769.7 is added to the Business and Professions~~
40 ~~Code, to read:~~

1 ~~3769.7. (a) If a licensee or applicant is arrested for any crime~~
2 ~~described in Section 3752.5, 3752.6, or 3752.7, upon receipt of~~
3 ~~certified copies of arrest documents, the board may provide notice~~
4 ~~of the licensee's or applicant's arrest on the board's Internet Web~~
5 ~~site, to employers, or both.~~

6 ~~(b) If the board provides notice of a licensee's or applicant's~~
7 ~~arrest pursuant to this section, the board shall remove the notice~~
8 ~~60 days after the criminal matter is adjudicated or when all appeal~~
9 ~~rights have been exhausted, whichever is later.~~

10 ~~SEC. 5.~~

11 ~~SEC. 4.~~ No reimbursement is required by this act pursuant to
12 Section 6 of Article XIII B of the California Constitution because
13 the only costs that may be incurred by a local agency or school
14 district will be incurred because this act creates a new crime or
15 infraction, eliminates a crime or infraction, or changes the penalty
16 for a crime or infraction, within the meaning of Section 17556 of
17 the Government Code, or changes the definition of a crime within
18 the meaning of Section 6 of Article XIII B of the California
19 Constitution.